

# ARIZONA DEPARTMENT OF REVENUE

1600 WEST MONROE - PHOENIX, ARIZONA 85007-2650

JANET NAPOLITANO  
GOVERNOR



J. ELLIOTT HIBBS  
DIRECTOR

May 19, 2003

Dear Licensed Tobacco Distributor:

Today Governor Napolitano signed SB1310 ([view SB1310](#)), model non-participating manufacturer's legislation designed to assist the State in enforcing A.R.S. § 44-7101, Arizona's "Escrow Statute." The new legislation went into effect immediately and imposes new obligations and restrictions on tobacco manufacturers, distributors and retailers.

## *The Directory of Cigarettes Approved for Stamping and Sale*

The new legislation, A.R.S. § 44-7111, includes findings that violations of the Escrow Statute threaten the integrity of the tobacco Master Settlement Agreement, the fiscal soundness of the State, and the public health. To prevent such violations, A.R.S. § 44-7111 establishes procedural enhancements to aid the enforcement of the Escrow Statute.

Among other things, the new legislation will (1) require the Attorney General to establish, publish and maintain a "Directory of Cigarettes Approved for Stamping and Sale," (the "Directory"), and (2) prohibit the stamping, sale or possession for sale in this State of any and all "cigarettes" (including roll-your-own tobacco) not listed on the Directory. The Attorney General will not include or retain in the Directory the name or brand families of any tobacco product manufacturer that fails to meet the statute's requirements.

Once the Directory is published it will be unlawful for any person (1) to affix a stamp to a package or other container of cigarettes of a "tobacco product manufacturer" or "brand family" not included in the Directory or (2) to sell, offer or possess for sale, in this State, cigarettes of a tobacco product manufacturer or brand family not included in the Directory. A.R.S. § 44-7111(3)(c). The Directory will be published on the Attorney General's website (<http://www.ag.state.az.us/>) within 90 days from the effective date of SB1310, May 19, 2003. The new law does allow distributors to apply for refunds for the cost of stamps that were lawfully affixed to cigarettes, which were subsequently removed from the Directory. A.R.S. § 44-7111(3)(b)(3).

**OTHER LOCATIONS:** Tucson Government Mall – 400 W. CONGRESS - TUCSON  
East Valley – 3191 N. WASHINGTON STREET - CHANDLER  
North Valley – 2902 W. AGUA FRIA FREEWAY - PHOENIX

### *Penalties for Violation of the Statute*

Since the Directory will be updated as necessary to correct mistakes and to add or remove a tobacco product manufacturer or brand family, it will be very important that tobacco distributors consult the Directory regularly to ensure that the tobacco product manufacturers and/or brand families of all cigarettes they are stamping, selling, offering, or possessing for sale are listed in the Directory.

The failure to comply with the provisions of A.R.S. § 44-7111 may have significant consequences, including but not limited to (1) the revocation or suspension of a distributor's license [see § 44-7111(6)(a)]; (2) a civil penalty of up to 500% of the retail value of the cigarettes or \$5,000, whichever is greater [see § 44-7111(6)(a)]; (3) the seizure and forfeiture of contraband cigarettes [see § 44-7111(6)(b)]; (4) an action for an injunction to restrain an actual or threatened violation [see § 44-7111(6)(c)]; (5) conviction of a class 1 misdemeanor [see § 44-7111(6)(d)]; (6) prosecution for deceptive trade practices under A.R.S. § 44-1522 et seq. see § 44-7111(6)(e)]; (7) costs of investigation, expert witness fees, costs of the action, and reasonable attorneys' fees [see § 44-7111 (7)(d)]; and (8) disgorgement of profits, gain, gross receipts, or other benefit from the violation [see § 44-7111(7)(e)].

### *Distributor NPM Reports; Records Retention*

Not later than 30 days after the effective date of the statute, all licensed tobacco distributors must begin supplying reports pursuant to A.R.S. § 44-7111(5)(a), which requires that distributors supply information required by the Department of Revenue concerning the brands and number of cigarettes or ounces, in the case of roll-your-own, for which the distributor affixed stamps or otherwise paid the taxes due. Pursuant to A.R.S. § 44-7111(5)(a) the Director has exercised his discretion and requires that distributors provide the following on a *monthly basis*:

- *Resident distributors* must provide the information required on (1) Form 800-20, including Schedules A-4, A-5, and C-2; (2) Form 800-25, including Schedules A-4, A-5, and C-2; (3) Form 819, including Schedules A-2 and A-3, and C-2; and (4) the Resident Distributor's Certification of No-Non-Participating Manufacturer's Activity (In Lieu of Non-Participating Manufacturer's Schedules).
- *Non-resident distributors* must provide the information required on (1) Form 800NR, including Schedule A; (2) 819NR, including Schedule A-2; and (3) the Non-Resident Distributor's Certification of No Non-Participating Manufacturer's Activity (In Lieu of Non-Participating Manufacturer's Schedules).

Revised forms may be supplied in the future.

Please note that the legislation also requires distributors to maintain, and make available to the Director and the Attorney General for a period of five years, (1) all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and (2) any other information relied upon in reporting.

*E-mail Address*

A.R.S. § 44-7111(3)(b)(5) requires that “every distributor shall provide and update as necessary an electronic mail address to the Director and the Attorney General for the purpose of receiving any notifications as may be required by this Article.” To comply with this provision, your electronic mail address should be provided and updated as necessary. A space for your electronic mail address will be provided on Forms 800/800NR and 819/819NR in the near future. In the meantime, please provide this information below the box provided for the distributor’s physical address at the top of the first page of these forms.

The new legislation will significantly reduce the number of violations of Arizona’s Escrow Statute and benefit the State and its citizens. We look forward to your cooperation in the implementation of this new law and will be pleased to respond to any questions you may have. Any questions should initially be directed to Mr. Tony Ketterer of the Department of Revenue, (602) 542-3345, ext. 4535, or the Tobacco Unit of the Arizona Attorney General, (602) 542-7761 or 7757.

Sincerely,

J. Elliott Hibbs  
Director  
Arizona Department of Revenue

JEH/sss